IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, CHARLES von BERNUTH and JOHN HERKLOTZ, Defendants.	Civil Action No. 00-2041

ORDER

In this civil action, Plaintiff, WRS, Inc. ("WRS"), asserted claims against defendants, Plaza Entertainment, Inc. ("Plaza Entertainment"), Eric Parkinson ("Parkinson"), Charles von Bernuth ("von Bernuth") and John Herklotz ("Herklotz"), arising out of the failure of Plaza Entertainment to pay WRS for duplicating film and video titles, and the personal guaranties of Plaza Entertainment's obligations to WRS executed by Herklotz on May 6, 1998 and by Parkinson and von Bernuth on October 12, 1998.

On March 23, 2006, WRS filed a motion for summary judgment with respect to the issue of Herklotz's liability to WRS based on his personal guaranty of Plaza Entertainment's obligations to WRS. Shortly thereafter, on March 31, 2006, Plaza Entertainment and Parkinson were ordered to show cause by April 7, 2006, why default should not be entered against them for failure to defend. Based on their failure to respond to the show cause Order, on April 10, 2006, the Court directed the Clerk to enter defaults against Plaza Entertainment and Parkinson pursuant to Fed.R.Civ.P. 55(a). On April 12, 2006, von Bernuth was ordered to show cause by April 25, 2006, why default should not be entered against him for failure to defend. Due to his failure to respond to the show cause Order, on April 28, 2006, the Court directed the Clerk to enter default against von Bernuth pursuant to Fed.R.Civ.P. 55(a).[1]

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[1]After WRS commenced this civil action, Attorney John W. Gibson entered his appearance on behalf of Plaza Entertainment, Parkinson and von Bernuth. During a case management conference with the Court on March 9, 2006, Attorney Gibson informed the Court of his intent to withdraw his appearance on behalf of Plaza Entertainment and Parkinson due to non-payment. Although he ceased representing the interests of Plaza Entertainment and Parkinson thereafter, Attorney Gibson never withdrew his appearance on their behalf. As to von Bernuth, Attorney Gibson agreed during the March 9th conference to file a motion for summary judgment by March 23, 2006, regarding the issue of von Bernuth's liability to WRS based on his personal guaranty of Plaza Entertainment's obligations to WRS. He also agreed on von Bernuth's behalf during the March 9th conference to share equally with WRS and Herklotz the cost of an accountant to review WRS's records and evaluate its claim for damages. Attorney Gibson failed to file a motion for summary judgment as to liability on von Bernuth's behalf by March 23, 2006 as agreed, and he failed to participate in the retention of an accountant to review WRS's records and evaluate its claim for damages as agreed, and these failures ultimately resulted in the entry of a default judgment against von Bernuth on February 20, 2007 without von Bernuth's knowledge. The failure of Attorney Gibson to diligently represent von Bernuth after March 9, 2006 is the basis of a pending motion by von Bernuth for relief from the default judgment.

On July 21, 2006, WRS's motion for summary judgment on the issue of Herklotz's liability to WRS for the obligations of Plaza Entertainment was granted. Subsequently, on September 26, 2006, Herklotz moved, pursuant to 28 U.S.C. § 1404(a), to transfer venue of this case to the United States District Court for the Central District of California.[2] At the time, the issue of the damages recoverable by WRS remained unresolved, as well as the crossclaims asserted by Herklotz against Plaza Entertainment, Parkinson and von Bernuth.[3]

On February 20, 2007, WRS's motion for summary judgment as to damages against Herklotz was granted, and the Court entered

[2]In support of the motion to transfer venue, Herklotz, a California resident, noted that he was 76 years old when WRS's initial complaint was filed in this Court; that he was 82 years old at the time the motion was filed; that he had traveled to Pittsburgh on a number of occasions to attend to matters associated with the case; that, due to deteriorating health, it was much more difficult for him to travel; that the other Defendants in this case are citizens of the State of California and either reside or have a principal place of business in California; that he intended to call Parkinson and von Bernuth as witnesses at the trial of the case; that it was unrealistic to believe that Parkinson, von Bernuth or a representative of Plaza Entertainment would attend a trial in Pennsylvania when they had never traveled to Pittsburgh to attend to any matters pertaining to the case and defaults had been entered against them; and that he intended to call at least two other witnesses at the trial of this case who are California residents and beyond the subpoena power of this Court.

[3]In his answer to WRS's complaint in this case, Herklotz asserted (a) a crossclaim against Plaza Entertainment for indemnification in the event he was held liable for any portion of Plaza Entertainment's debt to WRS, and (b) crossclaims against Parkinson and von Bernuth for contribution, breach of fiduciary duty and misrepresentation.

judgment in the amount of $2,584,749.03 in favor of WRS and against Herklotz. On February 20, 2007, the Court also granted WRS's motion for default judgment against Plaza Entertainment, Parkinson and von Bernuth, and default judgment in the amount of $2,584,749.03 was entered in favor of WRS and against Plaza Entertainment, Parkinson and von Bernuth.

In light of the remaining crossclaims by Herklotz against Plaza Entertainment, Parkinson and von Bernuth, the Court directed counsel for WRS and counsel for Herklotz to appear at a conference on February 27, 2007 to discuss Herklotz's pending motion to transfer venue pursuant to 28 U.S.C. § 1404(a). Following the conference, the Court entered an Order granting an oral motion by Herklotz's counsel to sever his crossclaims against Plaza Entertainment, Parkinson and von Bernuth from the other claims asserted in this case, and granting the motion to transfer venue with respect to the crossclaims. In all other respects, Herklotz's motion to transfer venue was denied as moot.

Based on Herklotz's reasonable belief that the Court's Orders granting summary judgment in favor of WRS on the issues of liability and damages and entering judgment in favor of WRS in the amount of $2,584,749.03 were final, Herklotz filed a notice of appeal from the Orders on March 8, 2007.[4]

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[4]Plaza Entertainment, Parkinson and von Bernuth have been designated appellees in the appeal pending before the Third Circuit. On October 26, 2007, von Bernuth filed a motion with

On May 28, 2007, Parkinson wrote a letter to the Court which was docketed as Document No. 148. In the May 28th letter, Parkinson states, in summary, that he contacted Attorney Gibson following receipt of misaddressed correspondence from the Court which contained "very disturbing" contents,[5] *i.e.*, Court documents relating to pending crossclaims by Herklotz against him and von Bernuth in this case; that he was surprised to receive any correspondence concerning this case because he had been informed by Attorney Gibson in October 2005 that the case had been dismissed and closed;[6] that the correspondence from the

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the Third Circuit to remand the case for further proceedings related to a Motion for Reconsideration or for Relief from Judgment pursuant to Fed.R.Civ.P. 60(b), which, as noted in footnote 1, he has filed in this Court. In the alternative, the motion filed by von Bernuth with the Third Circuit requested a stay of the appeal until the denial of his pending motion or an indication that the Court intends to grant the motion. On December 11, 2007, the Third Circuit stayed the appeal "until the District Court either rules on or reconsiders Mr. Von Bernuth's motion under 60(b)." A decision concerning von Bernuth's pending motion will be issued shortly.

[5]According to Parkinson, the correspondence from the Court had been sent to him at a "long-outdated address in Los Angeles." After the correspondence had been returned to the Court as undeliverable, it was forwarded to Parkinson at his current address in Arkansas.

[6]In fact, this case was marked closed on February 14, 2002 as a result of the Court's receipt of notification that WRS had commenced a voluntary Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Western District of Pennsylvania. After the confirmation of WRS's Plan of Reorganization in the Bankruptcy Court, WRS moved to reopen the case. The motion was granted on July 29, 2005, and, shortly thereafter, an identical action filed by WRS at Civil Action No. 03-1398 was consolidated with this case and closed.

Court indicated a motion concerning Herklotz's crossclaims had been granted; that the lack of notice of the "hearing" on Herklotz's crossclaims "severely handicapped [his] ability to have representation and to be properly defended;"[7] that he subsequently was informed in an email from Attorney Gibson that defaults had been entered against him, Plaza Entertainment and von Bernuth because a proper accounting had not been provided to the Court in this case; and that he has accounting records which prove that WRS actually owes a significant amount of money to Plaza Entertainment. Parkinson continues his letter by noting it appeared that neither he nor Plaza Entertainment had been represented in any of the recent hearings in this case, and he asks why he had not received correspondence indicating that hearings were being scheduled or that the case was not closed. Finally, Parkinson's letter states: "I would like to be granted the opportunity to appeal any judgment in this matter on behalf of myself personally, as well as for Plaza Entertainment, Inc."

Despite the indication in the May 28th letter of a desire to challenge the entry of default judgment against him and Plaza Entertainment, to date, Parkinson has failed to follow-up with a formal motion requesting relief.[8] If Parkinson still desires to challenge the default judgment entered against him on February 20, 2007, he shall file an appropriate motion and supporting brief with the Court **by January 25, 2008**. In the event he fails to do so, his right to challenge the default judgment will be waived.

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[7]It is apparent that the "hearing" to which Parkinson refers in his May 28th letter was the conference scheduled by the Court for February 27, 2007 to discuss Herklotz's pending motion to transfer venue pursuant to 28 U.S.C. § 1404(a) in light of the resolution of WRS's claim against Herklotz and the remaining crossclaims of Herklotz against Plaza Entertainment, Parkinson and von Bernuth.

As to Parkinson's stated desire to challenge the default judgment entered against Plaza Entertainment, the Court notes that Parkinson was the President and Chief Executive Officer of the apparently now-defunct Plaza Entertainment. Parkinson is not an attorney, and, therefore, he cannot represent Plaza Entertainment in connection with any challenge to the default judgment entered against the corporation. Accordingly, if such a challenge is still desired, counsel must be retained to enter an appearance on behalf of Plaza Entertainment and to file an appropriate motion and supporting brief with the Court **by January 25, 2008**. In the event counsel does not enter an appearance for Plaza Entertainment and an appropriate motion and supporting brief are not filed by **January 25, 2008**, the corporation's right

[8]The Court does not take action in response to letters from litigants or their counsel. A formal motion is required.

to challenge the default judgment will be waived.

AND NOW, this 19th day of December, 2007, IT IS SO ORDERED.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: Counsel of Record

Eric Parkinson
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